These facts raise the interesting question of the liability of the employer when the work is in the hands of a contractor. The defendants in this case contended that they should be relieved from liability because Nelson was an independent contractor. It appeared, however, that the contractor and his men were not hired to do a definite piece of work according to settled plans. The defendants were present and supplemented the contract with oral instructions. Under these circumstances Nelson was not an independent contractor. *Linnehan* v. *Rollins,* 137 Mass. 123, 50 Am. Rep. 287; *McCarthy* v. *Second Parish of Portland,* 71 Me. 318, 36 Am. Rep. 320. In the first case cited above the court said: "The absolute test is not the exercise of power of control but the right to exercise the power of control." The contrary has been held in *Norwalk Gaslight Co.* v. *Borough of Norwalk,* 63 Conn. 495, 28 Atl. Rep. 32. The court in *Goldman* v. *Mason City,* 2 N. Y. Supp. 337, said that when one represents the will of the employer in the result of his work only and not as to the means, he is an independent contractor and not a servant. This would seem to be the better rule. *Harris* v. *McNamara,* 97 Ala. 181, 12 S. Rep. 103; *Bennett* v. *Truebody,* 66 Cal. 509, 6 Pac. Rep. 329, 56 Am. Rep. 117; *Forsyth* v. *Hooper,* 93 Mass. (11 Allen) 419; *Knowlton* v. *Hoit,* 67 N. H. 155, 30 Atl. Rep. 346; *Hexamer* v. *Webb,* 101 N. Y. 377, 4 N. E. Rep. 755, 54 Am. Rep. 703; *Harrison* v. *Collins,* 86 Pa. St. 153, 27 Am. Rep. 699. The court also commented on the fact that even though Nelson was an independent contractor that fact would not release the defendants. The case comes within the rule that when a contract necessitates acts which will constitute a nuisance or involve a duty to the public, then the employer can not escape liability even though the work was in the hands of an independent contractor. *Woodman* v. *Metrop. R. R. Co.,* 149 Mass. 335, 21 N. E. Rep. 482, 4 L. R. A. 213, 14 Am. St. Rep. 427; *Wilbur* v. *White,* 98 Me. 191, 56 Atl. Rep. 657; *Boomer* v. *Wilbur,* 176 Mass. 482, 57 N. E. Rep. 1004, 53 L. R. A. 172; *Lowell* v. *B. & L. R. R.,* 23 Pick. 24, 34 Am. Dec. 33; *Gorham* v. *Gross,* 125 Mass. 232.

MASTER AND SERVANT—LIABILITY OF MASTER COMPELLED TO EMPLOY LICENSED EMPLOYEES.—A statute of the State of Illinois provides that it shall be unlawful for a mine owner to employ as mine manager any person who has not been given a certificate of competency by the State Board of Examiners. Fulton was a miner in the employ of defendant mining company. Through the negligence of a licensed mine manager he was killed. *Held,* that defendant was not relieved from liability arising from defaults of its manager. *Fulton* v. *Wilmington Star Mining Co.* (1904), 133 Fed. Rep. 193.

In selecting a manager the mine owner is restricted to a limited class of men—those who have been declared competent by the state. It was argued that in thus restricting the employer's choice and compelling him to employ one of a class, the legislative intent must have been to exempt the owner from the defaults of such managers. The general rule is that "When a person or corporation is compelled by law to employ an individual in a given matter, no liability attaches for his tortious or negligent acts." *Durkin* v. *Kingston Coal Co.,* 171 Pa. St. 193, 33 Atl. Rep. 237, 29 L. R. A. 808, 50 Am. St. Rep.

801; *Williams* v. *Thacker Coal Co.*, 44 W. Va. 599, 30 S. E. Rep. 107, 40 L. R. A. 812. Similarly it has been held that a ship owner is not liable for injuries arising from the fault of a compulsory pilot. *Homer Ramsdell Co.* v. *La Compagnie Generale*, 182 U. S. 406, 21 Sup. Ct. 831, 45 L. Ed. 1155; *Crisp* v. *Steamship Co.*, 124 Fed. 748; and that a city is not liable for default of a contractor when it is compelled to let contracts to the lowest bidder. *James* v. *City of San Francisco*, 6 Cal. 529, 65 Am. Dec. 526. The Federal court refused to follow these cases but adopted the rule as laid down in *Consolidated Coal Co.* v. *Seniger*, 179 Ill. 370, 53 N. E. Rep. 733, and *Riverton Coal Co.* v. *Shepherd*, 207 Ill. 395, on the theory that the certificate of the examiners was mere prima facie evidence of competency. This case was differentiated from those in which the master is compelled to employ a certain individual. Here he may choose from a class. This class, if the examinations are properly conducted, must embrace all the competent men in the profession. The mine owner would be restricted to the employment of such men for mine managers even at common law.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF AGENTS.—Plaintiff brought an action for damages for injuries to his intestate, a laborer working for the Board of Water Commissioners on an enlargement of defendant's reservoir. The defendant contended that in prosecuting such work it was performing a public governmental duty and hence was not liable. *Held*, that the city, in carrying on such work, was not performing a public governmental duty so as to exempt it from liability for the negligence of its agents, the Board, and those acting under them. *Hourigan* v. *City of Norwich* (1904), — Conn. —, 59 Atl. Rep. 487.

The powers of a municipal corporation are of a two-fold nature; first, those which it exercises as an agent of the state and which are governmental in character and, second, those which it exercises as a private corporation. The general rule may be stated that for damages resulting from the exercise of the first class of powers it is not liable. ELLIOTT ON MUNICIPAL CORPORATIONS, § 301. Its liability resulting from the second class is based on the rules fixing the liability of private corporations. The work being done on the Norwich reservoir was work which would result for the corporate benefit and profit, and under such circumstances the city is liable. *District of Columbia* v. *Woodbury*, 136 U. S. 450. It was such work as does not primarily rest upon a municipality and work carried on by a board which was not a part of the necessary machinery for the performance of governmental functions. In carrying on the trade in water the city stands in the relation of an owner of private property. A statement of facts very similar to those found in the principal case is found in *Pettengill* v. *Yonkers*, 116 N. Y. 558, in which case the city was held liable for the negligent acts of the Board of Water Commissioners in failing to protect the public from trenches dug in extending the water service.

NUISANCE—CONTINUANCE—DAMAGES.—Plaintiffs claim to be the owners of certain lands situated on Deer Lodge river, below defendant's concentrating, smelting and reduction plant. They pray judgment for deprivation of the use of the waters for domestic purposes for five years, for destruction